



U.S. Department
of Transportation
Federal Highway
Administration

Memorandum

Subject Environmental Guidebook Additions to Section 4(f) Policy Paper Date

JUN 7, 1989

From Director, Office of Environmental Policy
Washington, D.C. 20590

Requ. to
Attn. of HEV-11

To Regional Federal Highway Administrators
Federal Lands Highway Program Administrator

Attached hereto are a new cover sheet, a revised page ii, a revised page 20 and a new page 21 for the Section 4(f) Policy Paper. The changes are made to reflect a recent Memorandum of Understanding between FHWA and the U.S. Forest Service on scenic byways and to establish uniform national FHWA policy on temporary construction easements.

Several recent court decisions have indicated that certain minimal, temporary uses of land would be consistent with the Section 4(f) statute. The United States District Court for the District of Columbia found that a merely temporary occupancy of several parks during construction would not amount to a use within the meaning of Section 4(f). See Coalition on Sensible Transportation v. Dole, 642 F.Supp. 572 (D.D.C. 1986). This decision was ultimately reversed on factual grounds (i.e., the appellate court found that removal of 50-year-old trees and substantial alteration of slopes amounted to more than a temporary occupancy). However, the court specifically left open the question of whether temporary occupancy constituted a Section 4(f) use. See Coalition on Sensible Transportation v. Dole, 826 F.2d 60 (D.C. Cir. 1987). In National Trust for Historic Preservation v. Dole, 819 F.2d 1164 (D.C. Cir. 1987), the Court stated that the plaintiffs had not established a use within the meaning of Section 4(f) in a case involving the installation of a fence on a historic bridge although the court found that Section 4(f) did not apply for other reasons.

These decisions suggest that some construction related activities taking place on land included in a Section 4(f) resource may be so minor in scope and duration that the preservation of parks and historic sites would not be impeded and applying the statute would have inappropriate or even counterproductive results.

There are strong logical reasons for not applying Section 4(f) to temporary construction easements which do not harm the Section 4(f) resource. First, no statutory goal of Section 4(f) is impaired. The purpose of Section 4(f) is the preservation of parkland and other areas protected by the statute. Where no land is taken or diminished in value, achievement of this goal is not impaired. Using publicly-owned lands for construction easements can result in less disruption to the surrounding community and often may result in enhancement of the protected resource.

Please distribute copies of this memorandum with attachments to those in your Region who have copies of the Environmental Guidebook or who otherwise need to be informed of current Section 4(f) policy.

A handwritten signature in black ink, appearing to read 'Ali F. Sevin', with a large, stylized initial 'A'.

Ali F. Sevin

4 Attachments